

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARK ORTEGA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**DITOMMASO INC.,
and DATA KING OF NEW YORK INC.,
and MERIDIAN SERVICES L.L.C.,**

Defendants,

Case No. 5:24-cv-369-JKP-ESC

PLAINTIFF’S MOTION FOR CLERK’S DEFAULT

Pursuant to Federal Rule 55(a), Plaintiff Mark Ortega requests that the Clerk enter a default against Defendant Data King of New York Inc. (“Data King”) for failing to timely respond to the complaint. In support of this motion, Plaintiff states as follows:

1. On April 10, 2024, Plaintiff filed a Class Action Complaint against DiTommaso Inc. *See* ECF No. 1.
2. On May 20, 2024, Plaintiff filed its First Amended Complaint against DiTommaso Inc. and added Data King and Meridian Services L.L.C as parties to the lawsuit. *See* ECF No. 8.
3. On June 14, 2024, Plaintiff effected service of process on Data King by serving it via the New York Department of State with a summons and a copy of Plaintiff’s First Amended Class Action Complaint by personal service. *See* ECF No. 21.
4. On June 25, 2024, Plaintiff filed its Second Amended Complaint against DiTommaso Inc, Data King and Meridian Services L.L.C. *See* ECF No. 16.

5. On August 28, 2024, Plaintiff served Data King with the Second Amended Complaint by personal service.

6. Accordingly, Defendant was required to respond to Plaintiff's Second Class Action Complaint 14 days from August 28, 2024, which was due by September 11, 2024. *See* Fed. R. Civ. P. 15(a)(3).

7. As of today, September 22, 2024, Defendant has failed to answer or respond to the First and Second Amended Class Action Complaints, as required by Federal Rule of Civil Procedure 15(a)(3) and as demonstrated by the record in this action and by the Declaration of Paulina Almanza submitted herewith. *See Exhibit A* (Almanza Decl.) ¶¶ 5-10.

8. Therefore, Plaintiff Mark Ortega, individually and on behalf of the proposed class defined in the Class Action Complaint, respectfully moves for Clerk's Entry of Default against Defendant JKB Financial Inc. pursuant to Federal Rule of Civil Procedure 55(a).

Dated: September 22, 2024

By: /s/ Paulina Almanza
Paulina Almanza (TX Bar No. 24109580)
paulina@almanza.legal
Almanza Terrazas PLLC
13423 Blanco Rd, PMB 8098
San Antonio, Texas 78216
Telephone: 512-900-9248

Attorneys for Plaintiff and the putative Class

CERTIFICATE OF SERVICE

I certify that on September 22, 2024, a copy of this document was served on Defendant Data King, via Certified Mail at the following address:

New York Department of State
One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231

/s/ Paulina Almanza
Paulina Almanza

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARK ORTEGA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**DITOMMASO INC.,
and DATA KING OF NEW YORK, INC.,
and MERIDIAN SERVICES L.L.C.,**

Defendants,

Case No. 5:24-cv-369-JKP-ESC

**DECLARATION OF PAULINA ALMANZA
IN SUPPORT OF PLAINTIFF’S APPLICATION FOR CLERK’S ENTRY OF DEFAULT
AGAINST DEFENDANT DATA KING OF NEW YORK INC.
PURSUANT TO FED. R. CIV. P. 55(a)**

I, Paulina Almanza, declared under penalty of perjury and based on my own personal knowledge that the following statements are true:

1. I am the attorney of record for Plaintiff Mark Ortega and the proposed class in this action, and I submit this Declaration in support of Plaintiff’s Application for Clerk’s Entry of Default Against Defendant Data King of New York, Inc. (“Data King”) pursuant to Federal Rules of Civil Procedure 55(a).

2. On April 10, 2024, Plaintiff initiated this putative class action by filing the Class Action Complaint against Defendant DiTommaso, which alleges that Defendant DiTommaso transmitted telemarketing solicitations to his cellular telephone and to numerous other similarly situated individuals’ cellular telephones without the requisite prior “express consent” in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”).

3. On May 20, 2024, Plaintiff filed its First Amended Class Action Complaint against DiTommaso Inc. and added Data King and Meridian Services L.L.C. as parties to the lawsuit. *See* ECF No. 8.

4. On May 22, 2024, the Clerk of the Court issued the Summons in a Civil Action. *See* ECF No. 10.

5. On June 14, 2024, via a non-party process server who was at least 18 years old, Plaintiff duly served copies of the Summons in a Civil Action, First Amended Class Action Complaint, and Civil Cover Sheet on Data King, via the New York Department of State.¹ *See* ECF No. 21.

6. On June 25, 2024, Plaintiff filed its Second Amended Class Action Complaint against DiTommaso Inc., Data King, and Meridian Services L.L.C. *See* ECF No. 16.

7. On June 25, 2024, Plaintiff mailed the Second Amended Class Action Complaint to Data King via USPS First-Class Mail and Certified Mail to the same address it served the First Amended Class Action Complaint to Data King. The receipts of the USPS Electronic Delivery Confirmations are attached hereto as **Exhibit A-3**.

8. On July 23, 2024, Plaintiff received the USPS Certified Mail back to its mailbox, stating Return to Sender. A copy of the returned package is attached hereto as **Exhibit A-4**.

9. On August 22, 2024, Plaintiff hired a process server to serve the Second Amended Class Action Complaint on Data King via the New York Department of State. On August 28, 2024,

¹ Records maintained by the Business Entity Search Station for the New York Department of State office reflect that Data King did not name a registered agent. *See* **Exhibit A-1** (screenshot of information from the Business Entity Search Station for the New York Department of State). Service of Process may be effectuated via the New York Department of State (at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231). *See* **Exhibit A-2** (screenshot of information from the Service of Process/Notice of Claims Station for the New York Department of State).

Plaintiff successfully served the Second Amended Class Action Complaint upon Data King. A copy of the Signed Proof of Service is attached hereto as **Exhibit A-5**.

10. As of today, September 22, 2024, Defendant has failed to answer or respond to the First and Second Amended Class Action Complaints.

11. Defendant is not an infant, in the military, or an incompetent Person.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 22, 2024

Paulina Almanza

Paulina Almanza

EXHIBIT A-1

Department of State

Division of Corporations

Entity Information

Return to Results

Return to Search

Entity Details

ENTITY NAME: DATA KING OF NEW YORK, INC.
DOS ID: 3718714
FOREIGN LEGAL NAME:
FICTITIOUS NAME:
ENTITY TYPE: DOMESTIC BUSINESS CORPORATION
DURATION DATE/LATEST DATE OF DISSOLUTION:
SECTIONOF LAW: 402 BCL - BUSINESS CORPORATION LAW
ENTITY STATUS: ACTIVE
DATE OF INITIAL DOS FILING: 09/10/2008
REASON FOR STATUS:
EFFECTIVE DATE INITIAL FILING: 09/10/2008
INACTIVE DATE:
FOREIGN FORMATION DATE:
STATEMENT STATUS: PAST DUE DATE
COUNTY: NASSAU
NEXT STATEMENT DUE DATE: 09/30/2010
JURISDICTION: NEW YORK, UNITED STATES
NFP CATEGORY:

ENTITY DISPLAY NAME HISTORY FILING HISTORY MERGER HISTORY ASSUMED NAME HISTORY

Service of Process on the Secretary of State as Agent

The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery:

Name: THE CORPORATION
Address: 25 NEWBRIDGE ROAD, SUITE 200D, HICKSVILLE, NY, UNITED STATES, 11801

Electronic Service of Process on the Secretary of State as agent: Not Permitted

Chief Executive Officer's Name and Address

Name:
Address:

Principal Executive Office Address

Address:

Registered Agent Name and Address

Name:

Address:

Entity Primary Location Name and Address

Name:

Address:

Farmcorpflag

Is The Entity A Farm Corporation: NO

Stock Information

Share Value	Number Of Shares	Value Per Share
NO PAR VALUE	200	\$0.00000

EXHIBIT A-2



 Translate ▼

Department of State (/)



Service of Process/Notice of Claim

How to serve process on the New York Secretary of State.

How do I serve process on the Secretary of State?

A. Service of process on the New York Secretary of State as agent of a corporation or other business entity may be accomplished by serving an authorized person at the New York Department of State's office at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. Process should be brought to the Customer Service Counter located on the 6th Floor or through the Department of State's Electronic

Service of Process system.

In addition to the other methods prescribed by law, the New York Secretary of State acts as the statutory agent for service of process for domestic and foreign business corporations; not-for-profit corporations that have been formed or amended their Certificate of Incorporation after September 14, 1981; limited liability companies; limited partnerships; and limited liability partnerships; general associations, and condominium boards.

Only "process" may be served on the New York Secretary of State as agent. "Process" is defined as judicial process and all orders, demands, notices, or other papers required or permitted to be personally served on a domestic or foreign entity, for the purpose of acquiring jurisdiction of such entity in any action or proceeding, civil or criminal, whether judicial, administrative, arbitative, or otherwise, in this state or in the federal courts sitting in, or for, this state. (See §102(a)(11) of the Business Corporation Law, §102(a)(12) of the Not-for-Profit Corporation Law, §102(x) of the Limited Liability Company Law, §121-101(o) of the Partnership Law.)

Service of process is accepted pursuant to the following sections of New York State Law: Sections 306, 306-A, and 307 of the Business Corporation Law; Sections 306 and 307 of the Not-for-Profit Corporation Law; Sections 301-A, 303, and 304 of the Limited Liability Company Law; Sections 121-104-A, 121-109, 121-1505 (tel:121-1505), and 121-1506 of the Partnership Law; Section 19 of the General Association Law, and Section 339-n of the Real Property Law. Please note that nothing in these sections of New York State law affects the right to serve process in any other manner permitted by law.

Service of process upon a domestic or authorized foreign

corporation, limited liability company, limited partnership, or limited liability partnership, general association or condominium board by personal delivery requires that two copies of the process be personally served on the New York Secretary of State or any person authorized by him at the Office of the New York Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. Service by mail is not permitted. The statutory fee for serving process is \$40.

Service of process may also be served electronically on the Secretary of State as agent of a domestic or authorized foreign corporation, limited liability company, limited partnership, limited liability partnership, general association or condominium board provided such entity has provided the Department of State with an email address for such purpose. The statutory fee for serving process is \$40. There is no additional fee for serving process electronically.

Service of process upon an unauthorized foreign or suspended corporation, limited liability company, limited partnership, or limited liability partnership by personal delivery requires that one copy of the process be personally served on the New York Secretary of State or any person authorized by him at the Office of the New York Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. Service by mail is not permitted. The statutory fee for serving process is \$40. Please refer to the appropriate section of law for additional mailing/service requirements. Process on such entities may also be served through the Department of State's Electronic Service of Process system. There is no additional cost for electronic service of process.

The New York Department of State has prepared "Instructions for Service of Process on the Secretary of

State as Agent for Domestic or Authorized Foreign Entities

(<https://dos.ny.gov/instructions-service-process>). The instructions are intended to provide guidance to Process Servers who wish to serve process on the New York Secretary of State. Please note that the New York Department of State cannot provide legal advice. Process Servers are encouraged to consult with their own attorneys for advice on any matter discussed in these instructions or regarding any other aspect of service of process.

To serve process on the New York Secretary of State as statutory agent of any person, corporation or other business entity, the Process Server will be required to:

1. determine the identity of the entity intended to be served;
2. obtain the "DOS Search Page(s)" for the entity the Process Server intends to serve;
3. complete a "Service of Process/Notice of Claim Cover Sheet (<https://dos.ny.gov/service-processnotice-claim-cover-sheet>);"
4. hand-deliver the process being served (with the Service of Process Cover Sheet and DOS Search Page(s) stapled thereto), and the applicable fee, to an authorized person at the New York Department of State's office at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. Process, should be brought to the Customer Service Counter located on the 6th Floor. When dropping off documents, customers must always wear a face covering and maintain 6 feet from others in the office whenever possible.
5. serve process using the Department of State's Electronic Service of Process system by clicking on this [link \(https://dosforms.ny.gov/esonline\)](https://dosforms.ny.gov/esonline).

B. Service of process on the New York Secretary of State in any action or proceeding in which the New York Secretary of State is a party to such action may be accomplished by serving a deputy secretary of state authorized to accept service. All such process may be served at the New York Department of State's office at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. Process should be brought to the Customer Service Counter located on the 6th Floor.

Read: "[How to Serve Notice of Claim \(https://dos.ny.gov/how-serve-notice-claim-against-public-corporation\)](https://dos.ny.gov/how-serve-notice-claim-against-public-corporation)."

Department of State

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Community Services Block Grant

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Employment Opportunities

Meetings & Events

Executive Law 100-a

FOIL

Funding & Bid Opportunities

Language Access

Meeting Minutes

New New York Leaders

Office of Faith & Non-profit Development Services

Open Government

EXHIBIT A-3



Paulina Almanza <paulina@almanza.legal>

Send Certified Mail - Receipt for USPS Certified Mail to c/o New York Department of State

2 messages

Send Certified Mail <no_reply@sendcertifiedmail.com>
To: paulina@almanza.legal

Tue, Jun 25, 2024 at 1:19 AM

Send Certified Mail.com

This is a receipt for your USPS Certified with Electronic Delivery Confirmation : 9407111898765467122161 that was created on 06/25/2024 06:19:52

Addressed To:

DATA KING OF NEW YORK INC.
c/o New York Department of State
99 Washington Ave., 1 Commerce Plaza
Albany, NY 12260

The cost of this mailing was: **\$10.71**

If you mailed with Certified Mail Service, please note that USPS Certified Mail requires someone to sign for the letter when it is delivered. You may track the detailed delivery information by logging into <https://www.SendCertifiedMail.com>. On the red navigation bar find Reports, then Summary Tracking Report. Tracking and delivery information will be updated as it is made available by USPS and securely stored in your account for 10 years.

Certified Mail comes with Delivery Confirmation and is emailed to the email address included in the Mailing Profile as a courtesy. If you do not wish to receive Electronic Delivery Confirmation emails, you may remove or change the email stored in your Mail Profile. Do this by logging into <https://www.SendCertifiedMail.com>. On the red navigation bar, find Management and click on Mailing Profile. Then edit or remove the email address and click next to save and exit.

If you did not select a Certified Mail service when submitting your letter and selected First-Class Mail only, you will not receive in-route tracking or delivery reports. Record of your mailing can be found on the Mail Manifest Report.

If you require additional assistance, please contact our Help Desk (<https://www.SendCertifiedMail.com/contact>) or call us at 800-406-1792 Monday through Friday, from 8:30 AM to 6:00 PM EST.

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Send Certified Mail <no_reply@sendcertifiedmail.com>
To: paulina@almanza.legal

Tue, Jun 25, 2024 at 1:19 AM

Send Certified Mail.com

This is a receipt for your USPS First-class Mail : 00040898765586947372 that was created on 06/25/2024 06:19:56

Addressed To:

DATA KING OF NEW YORK INC.
c/o New York Department of State
99 Washington Ave., 1 Commerce Plaza
Albany, NY 12260

The cost of this mailing was: **\$5.76**

If you mailed with Certified Mail Service, please note that USPS Certified Mail requires someone to sign for the letter when it is delivered. You may track the detailed delivery information by logging into <https://www.SendCertifiedMail.com>. On the red navigation bar find Reports, then Summary Tracking Report. Tracking and delivery information will be updated as it is made available by USPS and securely stored in your account for 10 years.

Certified Mail comes with Delivery Confirmation and is emailed to the email address included in the Mailing Profile as a courtesy. If you do not wish to receive Electronic Delivery Confirmation emails, you may remove or change the email stored in your Mail Profile. Do this by logging into <https://www.SendCertifiedMail.com>. On the red navigation bar, find Management and click on Mailing Profile. Then edit or remove the email address and click next to save and exit.

If you did not select a Certified Mail service when submitting your letter and selected First-Class Mail only, you will not receive in-route tracking or delivery reports. Record of your mailing can be found on the Mail Manifest Report.

If you require additional assistance, please contact our Help Desk (<https://www.SendCertifiedMail.com/contact>) or call us at 800-406-1792 Monday through Friday, from 8:30 AM to 6:00 PM EST.

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[Quoted text hidden]

EXHIBIT A-4



Paulina Almanza <[email] >

PostScan Mail – New Mail Delivered

PostScan Mail <[email] > Tue, Jul 23, 2024 at 12:02 PM
To: paulina@almanza.legal

New Mail Delivered

You have new mail for PostScan Mail Mailbox #8098

Mail ID: 107213
Mail Sender: Return To Sender
Receiving Cost: \$0.00



For more details [login](#) to your account.

PostScan Mail Team

support@postscanmail.com

(800) 624-5866

EXHIBIT A-5

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. **5:24-CV-00369-JKP-ESC****PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for **Data King of New York, Inc.**
 was recieved by me on **8/27/2024**:

- ☐ I personally served the summons on the individual at *(place)* on *(date)* ; or
- ☐ I left the summons at the individual's residence or usual place of abode with *(name)* , a person of suitable age and discretion who resides there, on , and mailed a copy to the individual's last known address; or
- ☒ I served the summons on **New York Department of State**, who is designated by law to accept service of process on behalf of **Data King of New York, Inc.** at **99 Washington Ave., 1 Commerce Plaza (6th floor), ALBANY, NY 12260** on **08/28/2024 at 12:21 PM**; or
- ☐ I returned the summons unexecuted because ; or
- ☐ Other *(specify)*

My fees are \$ 0 for travel and **\$ 45.00** for services, for a total of **\$ 45.00**.

I declare under penalty of perjury that this information is true.

Date: 08/28/2024



Server's signature

Kenneth Bouchard

Printed name and title

**42 S. Main St
 Gloversville, NY 12078**

Server's address

Additional information regarding attempted service, etc:

I delivered the documents to New York Department of State, DESIGNEE with identity confirmed by subject showing identification. The individual accepted service with direct delivery. The individual appeared to be a brown-haired white female contact 55-65 years of age, 5'4"-5'6" tall and weighing 140-160 lbs.



Tracking #: 0141573296

